

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM

MOTION TO TERMINATE APPOINTMENT OF DR. JOHN O. BAXTER
AS THE COURT'S EXPERT WITNESS

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer and requests the Court to terminate the appointment of Dr. John O. Baxter as the Court's expert witness, and in support of this motion Plaintiff states as follows:

By Orders entered November 20, 1986 (Doc. 3298) and August 25, 1993 (Doc. 3480), the Court appointed Dr. John O. Baxter as the Court's expert witness on the history of New Mexico during the Spanish Colonial, Mexican and Territorial periods. Pursuant to that appointment, Dr. Baxter submitted to the Special Master a report on water use within Section 1 (Chama Mainstream) giving special attention to the relative priorities of community acequias, and he testified at hearings in August, 1996 in proceedings to redetermine water right priorities in the Rio Chama Mainstream Section. Subsequently, the Special Master determined that Dr. Baxter's appointment did not serve the Court, and the Court denied the State's motion to appoint Dr. Baxter as the Court's expert with respect to water right priorities in Sections 3, 5 and 7 of the Stream System. *See Memorandum Opinion and*

Order entered September 18, 1997 (Doc. 5698). The State later retained Dr. Baxter to undertake historical research in Sections 3, 5 and 7 as the State's historical consultant and expert witness.

The State is presently engaged in work to complete the redetermination of priority dates in Section 1 (Chama Mainstream), and there is additional needed historical work with respect to the priorities of private ditches in this section. Rather than request that Dr. Baxter complete the work in Section 1 under his appointment as the Court's expert, the State requests that the Court terminate that appointment so that the State may engage Dr. Baxter directly to complete his research in Section 1 as the State's historical consultant.

Counsel for the United States, Bradley S. Bridgewater and David W. Gehlert, and counsel for the Rio Chama Acequia Association, Fred J. Waltz, do not oppose granting this motion.

WHEREFORE the State respectfully requests that the Court terminate the appointment of Dr. John O. Baxter as the Court's expert witness on the history of New Mexico during the Spanish Colonial, Mexican and Territorial periods within the Rio Chama Stream System.

Respectfully submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of July, 2007 I filed the foregoing electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Ed Newville
EDWARD G. NEWVILLE